

NTSB Order No. EA-4824

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of February, 2000

Docket SE-15483

¹A copy of the order is attached. Respondent filed a brief on appeal, to which the Administrator replied.

restricted airspace without receiving permission from the agency using the airspace. The law judge then determined that, based on those facts, respondent violated sections 91.133(a) and 91.13(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91, as alleged, and that respondent presented no reason why the sanction of 90 days sought by the Administrator should not receive deference.² As discussed below, we deny the appeal.

The Administrator's order of suspension (complaint) alleged as follows:

1. On April 5, 1990, the Regional Counsel's Office for the Eastern Region, on behalf of the Administrator of the Federal Aviation Administration, issued [an] Order of Revocation, revoking your Commercial Pilot Certificate No. 1963893, in that you were convicted in 1987 for transporting and importing marijuana and you served as an airman on an aircraft in commission of that crime.
2. You are now, and at all times mentioned herein were, the holder of Private Pilot Certificate No. 1963893.
3. On or about May 9, 1998, you operated as pilot in

²The regulations state, in pertinent part:

§ 91.133 Restricted and prohibited areas.

(a) No person may operate an aircraft within a restricted area... contrary to the restrictions imposed, or within a prohibited area, unless that person has the permission of the using or controlling agency, as appropriate.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

command, Civil Aircraft N5792C, a Cessna, Model 170, on a flight conducted under Part 91 of the Federal Aviation Regulations, with a departure from Fresno-Chandler Airport, Fresno, California and with a planned destination of Boulder, Colorado.

4. Incident to said operation, without receiving permission from the using or controlling agency, you operated Civil Aircraft N5792C through Restricted Airspace Areas R-4807 and R-4808.
5. At all times mentioned herein, Nellis Air Force Base was the using agency and Los Angeles Air Route Traffic Control Center was controlling agency for the above-listed Restricted Airspace Areas.
6. Your operation of N5792C, in the manner and circumstances described above, was careless or reckless so as to endanger the life or property of another.

Respondent admitted to paragraphs 1-3 and 5, and denied paragraphs 4 and 6. Later, in his answer to the Motion for Summary Judgment, however, he admitted that he had been "unsure of his exact position," during the flight and had been trying to ascertain his position when he was intercepted by a government aircraft and "directed out of the area." Answer to Motion at 1-2. The respondent did not dispute the validity of any of the supporting documents that the Administrator filed with her Motion for Summary Judgment, instead arguing that his actions did not result in a danger to any other's life or property.

The law judge found that there was no material issue of fact in dispute, and with that conclusion, we agree. As the law judge noted, respondent's claim that he was given the wrong map at Chandler Field and that he experienced strong

winds which carried his aircraft into the restricted area more rapidly than normal, even if accepted as proven, would not have been sufficient to support a defense of emergency under FAR section 91.3(b). As for respondent's assertion that he did not violate section 91.13(a) because no actual endangerment occurred, our case law is well-settled that potential endangerment is enough to support a finding of careless or reckless operation. See, e.g., Administrator v. Harris, NTSB Order No. EA-4475 at 3, n.5 (1996). As the law judge noted, "[u]nauthorized entry into a Restricted Area is at least potentially dangerous both to the pilot so operating his aircraft and those others who could be conducting activities within such Restricted Airspace." Order at 3.

On the issue of sanction, the Administrator asserts that the proposed 90-day suspension is within the recommended 30 to 90-day suspension period, as set forth in the Sanction Guidance Table, FAA Order 2150.3A, Appendix 4, for flight within a restricted area and takes into account respondent's violation history. Respondent has identified no valid reason why deference should not be given to the Administrator's choice of sanction. His argument that a suspension will impact his livelihood is not one that the Board will consider as a basis to reduce an otherwise valid sanction. See, e.g., Administrator v. Uridel, NTSB Order No. EA-4772 (1999); Administrator v. Van Ovost, NTSB Order No.

EA-4681, n.9 (1998). He further argues that his prior violation occurred in 1986 and was not for unsafe operation of an aircraft. Utilizing an aircraft for transporting and importing illegal drugs is a very serious offense, one which the Administrator was permitted to consider when choosing sanction. We see no reason to disturb the law judge's decision to affirm the Administrator's choice of sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's private pilot certificate shall begin 30 days after the service date indicated on this opinion and order.³

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

³For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).